

Continental Breakfast 6: Is Switzerland a model for the UK-EU relationship?



*The Swiss ambassador to the UK joined experts in the field at the LSE on 6 December to discuss the pros and cons of the Swiss model as a frame for Britain's future relationship with the EU. **Diane Bolet (LSE)** reports on the key points of the discussion, which was held under Chatham House rules. The Swiss model is instructive for the UK – but perhaps chiefly because of its inherent problems and unsuitability for the UK.*

Switzerland enjoys a unique relationship with the EU, taking part in the European Free Trade Association (EFTA) without being a member of the European Economic Area (EEA). While adopting the Swiss model may prove incompatible with some of the UK's priorities, reflecting on the EU-Swiss relations might provide useful pointers for the way the UK negotiates with the EU.

How does the Swiss model fit in the options on the table for the UK deal?

Switzerland's relationship with the EU was not built in a day, but has evolved over the years in long rounds of bilateral negotiations. The Free Trade Agreement (FTA) signed in 1972 marked the start of an organic development of sector-by-sector membership of the Single Market. More than 120 agreements have covered a variety of sectors. They range from the Dublin regulation, which specifies humanitarian standards regarding asylum seekers, to Schengen Accords, which [removed border patrols](#) between Switzerland and the EU. On a spectrum of post-Brexit negotiating scenarios, the Swiss way would be situated close to the soft Norwegian-style option, just above a 'Comprehensive Economic and Trade Agreement Plus' (CETA+) option that would resemble the EU-Korea FTA with more services provision.

The 'Swiss way' has some merits. It enables flexible and tailor-made agreements to be made and potentially modified in the future. It is founded on a nuclear option in the spirit of Delors' co-decision procedures, which requires that if one agreement is breached, then all are breached ('*Tous l'acquis, rien que l'acquis*'). Each bespoke, modular agreement is subject to scrutiny in a joint committee that ensures it is transposed into Swiss law in compliance with the EU law ('*autonomer Nachvollzug*') so that the integrity of the single market is [protected](#) ('*Verträglichkeitsprüfung*').



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However, those joint committees only meet once a year and are generally [not able to take decisions by themselves](#). As Switzerland is under no legal obligation to take on new EU legislation, some legal disputes about new agreements or amendments can arise and remain unresolved. The fact that all agreements of a negotiation need to be approved, known as the guillotine provision, has contributed to stalemate situations.

Yet the 'Swiss way' is considered too restrictive by the EU and the UK, for several reasons.

Drawbacks and difficulties for the EU

The EU feels Switzerland is [cherry-picking](#) without fulfilling membership obligations and accepting ECJ jurisdictions. Unlike for countries in the EEA which have to directly apply the EU rules without having a say, the Switzerland-EU relations entail ongoing and continuous negotiations that need to be reached by both parties. This causes legal disputes in case of disagreement, for which the judicial framework is not entirely clear. *De jure*, the Court of Justice of the European Free Trade Association States plays a role in resolving disputes, but [de facto, the EFTA court 'shadows' interpretations of the European Court of Justice](#) (ECJ). Not only are the EFTA's Court Statute and its Rules of Procedure modelled on those of the ECJ, but the EFTA Court follows ECJ case law as a rule (law on the books). The judgments in Norway, Liechtenstein and Iceland, the non-EU members who belong to the EFTA court, carry the same force as the preliminary rulings rendered by the ECJ under Article 267 TFEU.

As such, a move out of the EU and into the EEA implies a subjugation of national sovereignty, since members lose their representation in all the EU law-making bodies, but remain subject to the laws. The EU would, however, prefer to maintain a level playing field with the UK – as it does with the EEA countries – rather than the sort of relationship it has with Switzerland. The latter's undertaking to "autonomously copy EU law" results in perpetual dispute, often followed by threats of trade restrictions and eventually by Swiss acquiescence.

If any legal dispute occurs between an EU country and Switzerland, the ECJ can only intervene when there is a clash between Swiss law and EU law. The ECJ is therefore powerless to act when there is no Swiss law corresponding to the EU law, which can lead to situations where Swiss companies are operating within the Single Market but are not bound by its rules. This is the heart of the problem. The 'Swiss way' is considered an inflexible tool in which '*à la carte*' agreements are inevitably problematic for the EU.

Therefore, the EU proposes a more binary choice for the UK of either CETA or European Economic Area (EEA) types, because they fit better into existing structures. CETA covers some services, some regulatory equivalence and disputes resolution mechanisms without having the extensive mutual recognition, monitoring and sanctions of a 'CETA Plus' agreement. The EEA is relatively easy for the EU, as states have to apply the whole EU *acquis* and no new agreements are needed if the EU changes its regulatory architecture.

Drawbacks and difficulties for the UK

One important drawback to adopting the Swiss model for the UK is the obligation to fulfil the fourth pillar of the single market if it still wants to be part of it – the **free movement** of persons. After Switzerland initially restricted freedom of movement of people, the EU immediately sanctioned it by limiting its university partnerships with the EU like HORIZON 2020. This eventually prompted Switzerland to temper the law to bring it in line with the EU legislation. This seems unacceptable from the British point of view, since one of the main driving forces for Brexit was the desire to control immigration.

Another major incompatibility with the Swiss model is the fact that it does not cover **financial services**. Financial services 'passporting' is not part of the Swiss agreement, partly because of an initial Swiss desire to retain their banking secrecy rules. However, having since been forced to become more transparent, some Swiss banks pressed for access to the single market, and finance is currently part of the negotiations of the third package. In spite of the high degree of convergence between Switzerland and the EU, the financial services deal seems to be running into the sand. The deal was originally conceived at a time that Switzerland seemed to be moving towards full membership, but as that prospect has receded, the EU has become less willing to extend a key market access within a bilateral framework in which they are not comfortable. Furthermore, the required regulatory convergence is currently a source of political disagreements in Switzerland. As such, the Swiss financial sector's access to the Single Market is restricted, leaving it at a competitive disadvantage. Since financial services is the UK's largest export sector and almost 5,500 UK firms [rely on corporate 'passports'](#) to do business with other EU companies, it seems unlikely that the UK would favour such a model.

The **sovereignty issue** represents the most [fundamental difficulty](#) for the UK in adopting the Swiss way, especially because it constituted the strongest argument in the Leave campaign. Despite originally refusing to be part of the EEA on sovereignty grounds, Switzerland has found itself obliged to apply de facto EU laws in each negotiation of its bilateral sectors. As mentioned above, one example is the rejection of quotas on EU workers by the Swiss Parliament, overturning the results of a 2014 referendum. The parliament [opted instead](#) to give residents priority in new job vacancies. This U-turn was mostly taken [to comply with EU law and keep access to the Single Market](#). Since the EU is its biggest trading partner and it cannot afford to put that trade at risk by falling foul of their package agreements, Switzerland has no choice but to adapt to the EU product standards to sell products. As a result, it is a mistake to think Switzerland does not have to follow EU directives. For a European country outside the Union to trade with the rest of Europe, it must abide by EU regulations. The House of Commons Foreign Affairs Committee [reported](#) that the best way to have an effective say in the way the UK's tradable economy is regulated is to remain inside the Union.

The Swiss way represents too many compromises for the UK – yet not enough to satisfy the EU that the UK would not undermine the rules of the Single Market. As a result, some people expect that the UK is likely to end up with a limited FTA, 'CETA minus' because

- i) there is not enough time;
- ii) the EU is not willing to accept an extensive services agreement;
- iii) the EU will be satisfied with a limited agreement on trade given that the UK sells services to the EU and the EU sells goods to the UK,
- iv) an extensive trade agreement will be hard to ratify by all EU27 countries;
- and v) for the UK it is better than nothing.

That said, **what aspects of the Swiss Model could be adapted to the UK?**

The way Switzerland has managed customs checks with the EU customs security, cooperation and facilitation area could be relevant for the UK. Implemented in 1990 and revised in 2009, this landmark agreement has led to very close convergence between the EU and Switzerland with regard to facilitating goods transit. Despite regulatory convergence, there are still customs checks of EU goods in Switzerland. However, goods arriving or transiting from EU and non-EU countries do not require extra checks by Switzerland since they are assumed to have been controlled by the EU countries.

The Swiss model is particularly instructive for the UK in the medium-term after the transition period. Although the UK might come out of its exit negotiation deal with a relatively limited FTA, negotiations with the EU will carry on. The UK/EU relationship will remain a permanent feature of both domestic and foreign politics in Britain. Many people seem to agree that the medium-term architecture of the UK-EU relationship in the next 10-15 years should already be being worked out, in spite of the lack of discussions on the matter in the British Parliament and among the party leaderships.

The way Switzerland started from an initial agreement and has gradually 'bolted on' bilateral agreements by sectors is therefore interesting to consider. The UK could potentially look like the Swiss model with decision-making archetypes similar to the EEA and Delors' co-decision procedures or Bruegel's '[Continental Partnership](#)'. The latter is a new form of collaboration that would include continued partnership in terms of the free movement of goods, services and capital with limited labour mobility (Bruegel, 2016). This new inter-governmental system would guarantee decision making and implementation of regulations in line with the EU Single Market ones. It would also allow closer cooperation in foreign policy, security and defence. Once the trade agreement has been signed, the [two parties will bolt on](#) various aspects of trade, economic and social policies. This may include expanding creative industries with the MEDIA programme, enlarging the academic field with HORIZON 2020 and ERASMUS programmes, sharing data to guarantee security and protection, as well as creating an EU-UK common arrest warrant and judicial cooperation to combat terrorism or an EU-UK 'Blue Card' for skilled workers.

Conducting the negotiations: lessons to learn from the Swiss model

While the Swiss model might be difficult to implement, there are many lessons to learn from it.

Institutional difficulties and problems of divergence

The 13 years of negotiations on the third package, in particular in relation to financial services, highlight the institutional difficulties and problems of divergence that Switzerland faces with the EU. The EU wants the ECJ to have jurisdiction to ensure that the integrity of the Single Market law is safeguarded, not Switzerland. But [to what extent](#) is the UK willing to converge or diverge with the EU? A key element of the campaign for the UK to leave the EU was to free itself from EU regulations, whereas Switzerland leans towards regulatory convergence.

Danger of spurring anti-Europeanism

Some people worry about the risk of increasing anti-Europeanism in the UK as almost every aspect of government policy affecting market conditions has to be negotiated with the EU, casting the EU in the perpetual role of an obstacle or opponent. Following the 1992 referendum that saw Switzerland very narrowly rejecting membership of the EEA, political resentment towards the EU has steadily increased, and recent polls show that support for membership has fallen to 11%. This could be particularly worrying for political stability in the UK, as the UK is perhaps less immune to political turmoil than the remarkably stable Swiss system.

Asymmetrical power dynamics

Dealing with the EU requires an understanding of the power dynamics between the EU and Switzerland that rest on asymmetry. Since the EU considers itself a political community with its own sets of principles and rules, it puts its principles first and becomes inflexible. Every time the EU changes any law, it is up to Switzerland to converge to that law domestically, not the other way round. Some have described the relationship in terms of the EU 'putting' non-EU countries in a special 'pillar' with limited room for manoeuvre. This may pose the risk of becoming a satellite state, just like Puerto Rico is to the United States. EEA members and Switzerland have become 'satellites' with no institutional representation, unrepresented in the Delors' co-decision procedures where institutional legislation was approved by both the Council and the Parliament. The UK would benefit from recognising that it faces a stark choice between open access to the Single Market, and gaining the autonomy to regulate its own economy. A failure to recognise this would be likely to lead to continual disputes with an inflexible EU making threats of trade restrictions, followed by humiliating climbdowns.

The same goes for financial contributions to the EU. They may continue as long as they remain compatible and converge with the EU requirements. In the Swiss case, cohesion funds for projects driven by Switzerland for EU recipients that are considered priority areas have been conducted. Whereas this asymmetric relationship is well-accepted in Switzerland, it seems a harder sell for the UK. One can hardly imagine a permanent UK commitment to pay generally to the EU, even if the UK has some say over the nature of the project. The UK might, however, accept making payments that will be mutually beneficial, such as paying to be part of HORIZON 2020.

No other treaties will replace the Single Market

The UK needs to 'realise' that no other treaties will be a substitute for full membership of the Single Market. To avoid disparity with the EU, the Swiss free-trade FTAs with third countries are completed after deals are signed between these third countries and the EU, such that [Switzerland operates](#) as a sort of 'manual' rather than automatic member of the single market. There are some exceptions to this rule, as shown with the [deal with China](#). Yet such substantive mutual agreements are not substitutes for the FTA of the EU. Given how asymmetric the Swiss bargaining power was, the Swiss were surprised to get such a favourable deal with China, but the Chinese afterwards explained that their motivation was that they meant to create a blueprint for their much more important agreement with the EU. Moreover, the EU is Switzerland's largest trading partner and any other agreements with large countries remain secondary. For instance, due to geographical closeness, Swiss trade with Lombardi is more important than trade with China and their trade with Tyrol is twice as significant as that with Russia. The UK perhaps needs to recognise that such agreements are only complementary and could not compensate for the loss of leaving the Single Market.

As for the desire to further expand new areas of agreements between the UK and Switzerland, a financial services deal may prove difficult because they are competitors and Switzerland would not like to provoke Brussels.

In a nutshell, the Swiss model is instructive for the UK, but perhaps as much because of its inherent problems and its unsuitability for the UK rather than as a blueprint for a future UK-EU relationship.

For a longer version of this post with footnotes and references, see [this report](#).

This post represents the views of the author and not those of the Brexit blog, nor the LSE.

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